This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0532

Salat Issa Salat, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed December 27, 2022
Affirmed
Larson, Judge

Stearns County District Court
File No. 73-CR-18-6764

Soren Paul Petrek, Minneapolis, Minnesota (for appellant)

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Chief Deputy County Attorney, St. Cloud, Minnesota (for respondent)

Considered and decided by Larson, Presiding Judge; Johnson, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellant argues the postconviction court erred when it found he waived his right to a jury trial knowingly, voluntarily, and in compliance with Minn. R. Crim. P. 26.01.[1] We affirm.

FACTS

Respondent State of Minnesota charged appellant Salat Issa Salat with five counts relating to a domestic-abuse incident.[2] Appellant appeared before the district court for trial. After the district court swore in appellant's Somali interpreter, the following exchange occurred:

> THE COURT: And, [defense counsel], it's my understanding that your client intends to waive his right to a jury trial and proceed to a [bench] trial. Is that still what your client wishes to do?
> DEFENSE COUNSEL: That is, Your Honor.
> THE COURT: If you could please inquire?

[1] Appellant also argues that he timely filed his petition for postconviction relief. Despite the postconviction court finding that appellant filed an untimely petition, the postconviction court still addressed the petition on its merits. Thus, this issue is moot since we can offer no effective relief. *Dean v. City of Winona*, 868 N.W.2d 1, 5 (Minn. 2015) (holding an issue is moot if "an award of effective relief is no longer possible").

[2] The state charged appellant with one count of domestic assault by strangulation under Minn. Stat. § 609.2247, subd. 2 (2018); one count of terroristic threats under Minn. Stat. § 609.713, subd. 1 (2018); one count of misdemeanor domestic assault—attempt or intention to inflict bodily harm under Minn. Stat. § 609.2242, subd. 1(2) (2018); one count of misdemeanor assault—commits act to cause fear of immediate bodily harm or death under Minn. Stat. § 609.2242, subd. 1(1) (2018); and one count of fourth-degree property damage under Minn. Stat. § 609.595, subd. 3 (2018).

BY DEFENSE COUNSEL:
Q. [Appellant], you and I have had a chance to discuss now on a couple of occasions your right to have a jury trial in this matter; is that correct?
A. Mmm.
Q. Yes?
A. Yes.
Q. And I've explained to you that in a felony case you could have a jury of 12 persons determine whether you were guilty or not. All 12 would have to be unanimous before finding you guilty.
A. Correct.
Q. I've also explained to you that you can just have the judge determine whether you were guilty or not.
A. Yes.
Q. And we've discussed this on a couple of occasions. We've discussed the pros and cons of just having a judge decide and just having the jury decide.
A. Yes.
Q. I've explained to you that it's your decision whether you have a jury trial or not, not mine.
A. Mm-hmm.
Q. Yeah?
A. Yes.
Q. And that I'm here to advise you.
A. Yes.
Q. And after discussing this last week, you determined that you would – had preferred to have the judge decide whether you were guilty or not as opposed to having a jury decide whether you were guilty or not.
A. Yes.
Q. And, again, that was your decision, not mine?
A. Yes.
DEFENSE COUNSEL: Is that sufficient, Your Honor?
THE COURT: It is for me. Anything further about the waiver, [prosecutor]?
PROSECUTOR: No, Your Honor.

The district court proceeded with a bench trial. The district court found appellant guilty of all five counts. The district court sentenced appellant to a stay of imposition for one count of terroristic threats and did not sentence appellant for the other four counts.

Appellant filed a petition for postconviction relief requesting the postconviction court vacate appellant's convictions. Appellant argued that the waiver of his right to a jury trial was not sufficiently knowing and voluntary under the United States and Minnesota constitutions, and the waiver did not comply with rule 26.01. The postconviction court denied appellant's petition for postconviction relief on the merits.

This appeal follows.

DECISION

Appellant contends the postconviction court erred when it found that appellant waived his right to a jury trial knowingly, voluntarily, and in compliance with rule 26.01. Specifically, appellant argues that the phrase "after being advised by the court of the right to trial by jury" in rule 26.01, subdivision 1(2)(a), requires the district court to speak directly to a defendant for a waiver to be valid, especially when a defendant requires an interpreter and has no experience with the district court. We review these issues de novo. *State v. Bey*, 975 N.W.2d 511, 516 (Minn. 2022).

A defendant is entitled to a trial by jury under both the United States and Minnesota constitutions. U.S. Const. art. III, § 2, cl. 3; U.S. Const. amend. VI; Minn. Const. art. 1, §§ 4, 6. In Minnesota, the right to a jury trial attaches whenever the state charges a defendant with an offense that has an authorized penalty of incarceration. Minn. R. Crim. P. 26.01, subd. 1(1)(a); *State v. Kuhlmann*, 806 N.W.2d 844, 848 (Minn. 2011).

A defendant may choose to waive this right to a jury and instead proceed to a bench trial. Minn. R. Crim. P. 26.01, subd. 1(2); *State v. Tlapa*, 642 N.W.2d 72, 74 (Minn. App. 2002), *rev. denied* (Minn. Jun 18, 2002). A defendant's waiver must be knowing,

voluntary, and intelligent. *State v. Ross*, 472 N.W.2d 651, 653 (Minn. 1991). Whether a defendant knowingly, voluntarily, and intelligently waives a constitutional right depends on the facts and circumstances of the case, including the defendant's background, experience, and conduct. *State v. Little*, 851 N.W.2d 878, 882 (Minn. 2014) (citing *State v. Rhoads*, 813 N.W.2d 880, 884 (Minn. 2012)).

Rule 26.01, subdivision 1(2)(a), details the proper method for a defendant to waive their right to a jury trial on the issue of guilt:

> The defendant, with the approval of the court, may waive a jury trial on the issue of guilt provided the defendant does so personally, in writing or on the record in open court, *after being advised by the court of the right to trial by jury*, and after having had an opportunity to consult with counsel.

(Emphasis added.) We have held that the waiver rule must be strictly construed. *Tlapa*, 642 N.W.2d at 74 (citing *State v. Ulland*, 357 N.W.2d 346, 347 (Minn. App. 1984)).

That said, rule 26.01, subdivision 1(2)(a), sets forth a "relatively painless and simple procedure to protect" a defendant's constitutional right to a jury trial. *State, City of Tracy v. Neuman*, 392 N.W.2d 706, 709 (Minn. App. 1986). The district court need not make an exhaustive inquiry into why the defendant waived their right to a jury. *Ross*, 472 N.W.2d at 654. But the district court must ensure the defendant is adequately informed of their rights, and the district court's caution in accepting the waiver must increase with the gravity of the offenses with which the defendant is charged. *Id.* at 653. The nature and extent of the inquiry into a defendant's decision to waive a jury trial may vary with the circumstances of a particular case. *Id.* at 654. Although it is advisable, a defendant need not be told in

each case that a jury consists of twelve members of the community, that a defendant may participate in selection of these jurors, that a jury's verdict must be unanimous and that, if a defendant waives their right to a jury, then the judge alone will decide their guilt or innocence. *Id.* The critical question is "whether the defendant understands the basic elements of a jury trial." *Id.*

Here, the record shows that, although the district court did not speak directly to appellant, appellant's counsel—upon the court's request—advised appellant of many of the rights listed in *Ross* and obtained his express waiver in open court. Appellant's discussion with his counsel addressed that (1) appellant had a right to a twelve-person jury; (2) this jury would have to be unanimous to find appellant guilty; (3) appellant could elect to have the judge decide his guilt instead of a jury; and (4) the waiver decision belonged solely to appellant. Throughout this colloquy, appellant affirmed that he had discussed all these matters previously with his counsel and affirmed his decision to waive a jury trial. The district court found the waiver sufficient.

This discussion exceeded the detail and breadth of other waivers appellate courts have affirmed. *See Ross*, 472 N.W.2d at 653; *State v. Pietraszewski*, 283 N.W.2d 887, 890 (Minn. 1979). For example, in *Pietraszewski*, the district court asked the defendant only if he wished to waive his right to a jury trial, to which the defendant replied, "That's true, Your Honor." 283 N.W.2d at 890. The *Pietraszewski* court held that, although a more thorough inquiry should have been made, reversal was not required. *Id.* Here, appellant's counsel advised him in open court of "the basic elements of a jury trial." *Ross*, 472 N.W.2d at 654. Then appellant personally affirmed he would like to proceed with a bench trial.

Appellant argues we must strictly construe rule 26.01, subdivision 1(2)(a), so "advised by the court" does not include "advised by counsel in front of the court." But there is a distinction between the previous cases calling for strict compliance with rule 26.01's language and appellant's case. *Ulland*, 357 N.W.2d at 347; *State v. Sandmoen*, 390 N.W.2d 419, 423-24 (Minn. App. 1986); *Tlapa*, 642 N.W.2d at 74. In the previous cases, we reversed because the defendant did not personally state their waiver on the record. *See, e.g.*, *Tlapa*, 642 N.W. 2d at 75 ("[A]t no time was [defendant] asked to state his waiver of a jury trial, to acknowledge that he had in fact waived that right, *or even to acquiesce in his attorney's statement of the waiver.*" (emphasis added)). We have noted that "where the [defendant] was present when his attorney purported to waive a jury trial, the court should have addressed the [defendant] directly *to make sure that he concurred in the waiver.*" *Sandmoen*, 390 N.W.2d at 423 (emphasis added). "As we view the rule, strict compliance is required in order to assure that the waiver is *voluntarily and intelligently* made." *Id.* at 423-24 (emphasis added). Here, appellant showed that "he concurred in the waiver" when he stated so on the record. *Id.* at 423. Thus, with thorough advisement from his counsel, appellant waived his right to a jury knowingly, voluntarily, and intelligently.

Further, we have affirmed waivers when the district court did not directly "advise" a defendant. *State v. Jones*, No. A03-1826, 2004 WL 2340077, at *2 (Minn. App. Oct. 19, 2004), *rev. denied* (Minn. Dec. 22, 2004);[3] *cf. State v. Raleigh*, 778 N.W.2d 90, 94-96 (Minn. 2010) (holding the district court did not err when defense counsel performed a task

[3] We observe that *Jones* is a nonprecedential opinion, but we recognize its persuasive value. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

that another rule places on the district court). In *Jones*, we affirmed a jury-trial waiver based on the defendant's written waiver as well as a discussion between the defendant and counsel at a pretrial hearing. *Jones*, 2004 WL 2340077, at *2. We concluded that the totality of the circumstances reflected the defendant knowingly, voluntarily, and intelligently waived their right. *Id.* (citing *Ross*, 472 N.W.2d at 654). Here, appellant clearly stated his waiver on the record and affirmed he had discussed this decision with his attorney previously. Much like *Jones*, the totality of the circumstances show appellant waived his right to a jury trial knowingly, voluntarily, and intelligently.

Appellant finally argues that this case is like *Tlapa* because both involve a defendant who required an interpreter. 642 N.W.2d at 75. We are not persuaded. The *Tlapa* court expressed concern that, "[a]lthough we do not doubt that [the defendant]'s attorney discussed with him a choice between a bench trial and a jury trial, those discussions were private, and we can only assume that an interpreter was available to assist [the defendant] in understanding and appreciating his attorney's explanation." *Id.* Here, appellant's discussions with his attorney were not entirely private. The district court observed appellant discuss his rights with his attorney in open court through a court-approved interpreter.

This case is closer to *State v. Pha*, No. A04-2183, 2005 WL 2129166, at *4 (Minn. App. Sept. 6, 2005).[4] In *Pha*, we affirmed a jury-trial waiver despite the defendant arguing that "his waiver was not knowingly, voluntarily, or intelligently made because he is

[4] We observe that *Pha* is a nonprecedential opinion, but we recognize its persuasive value. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

unfamiliar with the legal system and wished to speak more about the matter with the aid of an interpreter."[5] *Id.* We concluded the defendant's "counsel clearly explained the basic elements of a jury trial as outlined in *Ross*, and [the defendant] stated unequivocally that he wished to waive his right to a jury." *Id.* As in *Pha*, appellant had an "extensive discussion—aided by an interpreter—of jury-trial procedures" on the record with his attorney, which shows appellant waived his right to a jury knowingly, voluntarily, and intelligently. *Id.*

In sum, the record establishes that appellant waived his right to a jury trial knowingly, voluntarily, intelligently, and in compliance with rule 26.01. Appellant reviewed "the basic elements of a jury trial" with his counsel on the record, before the district court, and personally affirmed his choice to proceed with a bench trial. *Ross*, 472 N.W.2d at 654.

Affirmed.

[5] According to appellant's brief, appellant had no experience with the district court before this case.